

Rule 613. Witness's Prior Statements of Witnesses.

(a) **Showing or Disclosing the Statement During Examination.** When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

(b) **Extrinsic Evidence of a Prior Inconsistent Statement.** Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

Comment to 2012 Amendment

The language of Rule 613 has been amended to conform to the federal restyling of the Evidence Rules to make them more easily understood and to make style and terminology consistent throughout the rules. These changes are intended to be stylistic only. There is no intent to change any result in any ruling on evidence admissibility.

Cases

613.015 The trial court has the discretion to preclude cross-examination about a document that has not been admitted in evidence.

State v. Ellison, 213 Ariz. 116, 140 P.3d 899, ¶¶ 52–53 (2006) (in February 1999, victims were killed; victims' daughter testified she saw defendant working at her parents' house in July or August 1998; defendant sought to impeach her with defendant's Arizona Department of Corrections records that showed he was in prison from May 1998 through January 1999; court noted that AzDOC records had not been admitted in evidence, and held that trial court did not abuse discretion in ruling that defendant could not use records during witness's cross-examination absent their admission in evidence).

Paragraph (b) —Extrinsic evidence of prior inconsistent statement of witness.

613.b.015 The trial court has the discretion to preclude cross-examination about a document that has not been admitted in evidence.

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613.b.050 When a witness denies or does not remember making the statement, the party may then introduce extrinsic evidence of the prior statement.

State v. Ortega, 220 Ariz.320, 206 P.3d 769, ¶¶ 30–33 (Ct. App. 2008) (victim's brother saw defendant molest victim; when called to testify, brother either did not remember his prior statements to police detective or denied making them; trial court properly allowed state to read

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to brother excerpts from his interview with police, whereupon he remembered telling detective that defendant threatened him if he told anyone what had happened).

613.b.060 When a witness admits making the prior inconsistent statement, the trial court has discretion in deciding whether to admit extrinsic evidence of the statement; such extrinsic evidence usually will be unnecessary, but should be admitted when the statement itself has substantive use or would assist the jurors in determining which of various inconsistent statements is true.

State v. Rutledge (Sherman), 205 Ariz. 7, 66 P.3d 50, ¶¶ 14–25 (2003) (witness who testified at trial admitted making prior statement to police that was videotaped, and admitted all inconsistencies between trial testimony and videotaped interview, and offered explanations for those inconsistencies; defendant contended prior statements therefore were not inconsistent with trial testimony, and thus contended trial court abused discretion in admitting extrinsic evidence of prior statement (the videotape); court noted there were, in fact, several inconsistencies between witness's trial testimony and the videotaped interview, and that witness testified that he had lied to police because he was scared, had been threatened, and was intoxicated, and thus held videotape was admissible to allow jurors to assess witness's demeanor and credibility, and helped them decide which of witness's accounts to believe).

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